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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

NO. 1252

STATE OF TENNESSEE, ex rel,
CHESTER D. WYRICK, A. W. LeQUIRE,
T. H. BROWN, JR., RALPH CAUGHRON,
MARY E. SMITH, ARCHIE CHAPMAN,
ELIZABETH REDWINE and RAY PATTY,
Petitioners,

v.

CITY OF MARYVILLE, a Municipal
Corporation, T. NED LEE, JOE B.
MONTGOMERY, JR., LUKE M. KIDD,
and S. B. SHIELDS,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TENNESSEE

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TO THE HONORABLE WARREN E. BURGER,
CHIEF JUSTICE, AND THE ASSOCIATE JUSTICES
OF THE SUPREME COURT OF THE UNITED STATES

Come the Petitioners, who are shown in the caption hereof, and would respectfully show unto this Honorable Court that they are much aggrieved by the final Judgment of the Supreme Court of Tennessee, and have no other relief except to seek the aid of this Court by way of Petition for Certiorari.

I.

The Supreme Court of Tennessee is the highest Court of that State in which a decision can be had in any Judicial proceeding. The said Court in an unreported Opinion filed on September 5, 1969, denied the Petitioners certain relief sought against the acts of the Respondent herein, The City of Maryville, and to such an extent that the Constitutional rights of the Petitioners were violated as secured to them by the Constitutions of the State of Tennessee and of the United States.

On October 6, 1969, in an unreported Opinion, the Supreme Court of Tennessee denied a rehearing in the same matter to the Petitioners, and also refused to grant a Stay of Execution of the Judgment to permit the Petitioners to seek relief in the Supreme Court of the United States.

The copies of the unreported Opinions are filed herewith as Appendix A and Appendix B, respectively, to this Petition.

II.

The Original Opinion of the Supreme Court of Tennessee, of which the Petitioners now complain was filed on September 5, 1969, and is the same date for the entry of the Judgment in the case.

After the Original Opinion of the Supreme Court of Tennessee had been entered and within the time permitted by Law, the Petitioners filed a Petition to Rehear, and in the alternative, for a Stay of Execution of the Judgment pending the filing of a Petition for Certiorari with the Supreme Court of the United States, all of which relief was denied by the Supreme Court of Tennessee, as shown by the Order entered October 6, 1969.

Upon application to the Honorable Potter Stewart, Associate Justice of the Supreme Court of the United States, an extention of time was allowed in which to file this Petition for Certiorari, by Order of this Court dated January 3, 1970.

The jurisdiction of this Court is sought under 28 USC 1257 (3).

III.

QUESTIONS TO BE DETERMINED

1. Is a party in a civil action denied a right to a jury trial as provided by the Constitutions of the State of Tennessee and of the United States when the Jury trying the case fails to agree on all of the issues submitted by the Trial Court?

2. Where a State Statute circumscribes an issue of a lawsuit, does the failure of the Trial Court to submit that statutory issue to the jury, over the objection of the party complainant, amount to a denial of right to trial by jury as provided by the State Constitution and the Constitution of the United States, and also deprive the Party of due process of law, as provided by Amendment 14 of the Constitution of the United States?

3. Does the failure of the Trial Court to permit an evidentiary hearing on a municipal ordinance, which is one of the alleged basis of the lawsuit, amount to denial of due process of law as provided by Amendment 14 of the Constitution of the United States?

4. Regardless of its validity to any other extent, does a municipal ordinance which deprives seventeen hundred (1700) residents of the right to vote, hold office, or have

any voice in the government of the city for a period of time of from two to four years, deny them the immunities and privileges as guaranteed by Amendment 14 of the Constitution of the United States?

IV.

Municipal Corporations in the State of Tennessee are permitted to enlarge their boundaries by annexing new territory by statutory authority as set out and provided in Section 6-308 and sequence of the *Tennessee Code Annotated*.

Within the same statutory authority, the right to contest the annexing is given to aggrieved property owners, and among other things provides as follows:

> ". . . . Suit or suits shall be tried on an issue to be made up there, and the question shall be whether the proposed annexation be or not be unreasonable in consideration of the health, safety and welfare of the citizens and property owners of the territory sought to be annexed, and the citizens and property owners of the municipality."
>
> *Tennessee Code Annotated* 6-310
> Vol. 2, P. 226

The Constitution of Tennessee provides for jury trials as follows:

> "*Trial by Jury-Qualification of Jurors*.—The right to trial by jury shall remain inviolate, and no religious or political test shall be required as the qualification for jurors."
>
> Article I, Sec. 6,
> *Constitution of Tennessee*

The Constitution of the United States provides for jury trials as follows:

> "*Trials by Jury in Civil Cases*. —In suits of common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no facts tried by a jury, shall be otherwise examined in any Court of the United States, and according to the rules of common law."
>
> Amendment 7,
> *Constitution of the United States*

The Petitioners claim protection under the following portion of the Constitution of the United States:

> " .... No states shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."
>
> Amendment 14, Sec. 1
> *Constitution of the United States*

V.

FACTS AND CIRCUMSTANCES OF THE CASE

The facts of the case and proceedings in the State Court are briefly set out below:

A.

STATEMENT OF THE FACTS

The City of Maryville, Tennessee, the Respondent herein, on the 15th day of May, 1967, attempted to increase its

land area by more than fifty (50%) percent and add some seventeen hundred (1,700) residents to its population by annexing a specified area.

The City, in conjunction with bringing about the proposed annexation, was at the same time moving the Legislature of the State of Tennessee to effect a change in the form of the City Government. Two days after the election ratifying the change in the form of City Government, the Respondents attempted to enact the annexing Ordinance which resulted in the present lawsuit.

There was enacted in the Charter of the new-formed City Government a provision which by design or otherwise prohibited the Petitioners herein from voting for the Officials for a period of from two to four years. The provision is as follows:

> "All persons who are and who have been for six months next preceding the election, bona fide residents of the City of Maryville, and who are qualified to vote for members of the State Legislature and have registered, shall be entitled to vote in said elections."
>
> *Private Acts of Tennessee 1967*
> Chapter 27, Sec. 3, p. 114

The new election took place the following July, and the Petitioners were not permitted to vote and have not been permitted to vote since that time, and will not be permitted to vote again until July, 1971.

B.

TRIAL COURT ACTIONS IN THE STATE COURT

The Petitioners herein initiated a quo warranto proceeding in the State Court with general trial jurisdiction, and obtained relief by way of temporary injunction.

Among other allegations in the Original lawsuit, the Petitioners alleged that the Ordinance upon which the Annexation was based was void (Record Vol. 1, p. 3, 4) and that the City initiated a change in the form of City Government and either by design or otherwise, under the terms of the said Act, the residents of the proposed annexed area were prevented from having any representation in the City Government fully for a period of four years, and to any extent for a period of two years (Record Vol. 1, p. 7).

The Petitioners herein demanded and were granted a jury to try the issues joined in the lawsuit. At the conclusion of the testimony of both sides, the Trial Judge submitted certain issues to the Jury (Appendix C to this Petition).

The Petitioners herein submitted proposed issues of fact which were rejected by the Court (Record Vol. 1, p. 29, 32).

The Petitioners objected to the issues submitted by the Trial Judge as being insufficient and requested the Trial Judge to submit the following issues as set out in the statutes heretofore mentioned:

> 2. "Does the health, safety, and welfare of the citizens and property owners of the area sought to be annexed, and the citizens and property owners of the present City of Maryville require the area to be annexed."
>
> *Record Vol. 4, p. 422*

The above request was refused by the Trial Court.

It was the opinion of the Petitioners that only one of the issues submitted to the Jury by the Court, namely that

relating to the deficiency of the description set out in the Ordinance, was material.

The Jury did not agree upon all the issues submitted to them by the Court (Record Vol. 4, p. 428).

The Trial Court accepted the verdict of the Jury, notwithstanding the fact that they had failed to agree on all of the issues submitted, and entered a Final Decree based on the Jury's verdict (Record Vol. 4, p. 429).

The Petitioners objected to the Court's accepting the verdict of the Jury without an unanimous agreement and filed a written Motion for the Trial Court to declare a mis-trial (Record Vol. 1, p. 38).

This Motion was overruled by the Trial Court.

The Petitioners thereafter filed a Motion for a New Trial with the Trial Court, and among other things assigned the following as errors:

"1. It was error for the Court not to declare a mis-trial on its own Motion when the Jury failed to reach an agreement on the issues submitted, and upon the Court's failure to do so, upon a written Motion of the Relators.

"2. It was error for the Court to fail to hear proof on the issues not submitted to the Jury (relating to the validity of the annexing Ordinance) as determined before the Trial commenced.

"3. The Court submitted improper issues of fact to the Jury in that they were incomplete and did not encompass the matters to be determined.

"4. It was error for the Court to fail to submit to the Jury issues of fact as submitted by the Relators as follows:

"'Does the health, safety, and welfare of the citizens and property owners of the area sought to be annexed and the citizens and property owners of the present City of Maryville require the area to be annexed?'"

At the beginning of the lawsuit it was understood by the Petitioners that the Trial Judge would hear separate proof regarding the validity of the Ordinance, and for this reason there was no insistence that such an issue be submitted to the Jury.

The Trial Judge, however, did not permit any additional hearing on the matter concerning the validity of the Annexing Ordinance.

The matter on the Ordinance to a great extent was discussed in a conference before the commencement of the trial, but is evidenced in the Record by the following:

THE COURT: What about the Charter, etc., do you want to say it has been stipulated one, two, three and four?

MR. PATTY: Well, we would submit those at a later time.

THE COURT: That would be a legal question to submit to the Court.

MR. PATTY: Yes.

THE COURT: All right.

MR. PATTY: I believe that will be sufficient at this time, the information will be encompassed in the proof.

Record Vol. 2, p. 2

This seems to be the Trial Court's understanding also as indicated in his charge to the Jury when he said:

"In other words, the questions of law are not being submitted for your consideration at all."

Record Vol. 4, p. 416

The Petitioners position that they were to have a separate hearing on the validity of the Ordinance is further supported by their Motion reciting same filed with the Trial Court (Record Vol. 1, p. 46).

The Jury Trial started on the 15th day of July, 1968, and continued for four days.

The Trial Court thereafter on the 3rd day of October, 1968, without the approval of Counsel for the Petitioners herein, entered a Final Decree denying all of the relief which the Petitioners sought (Record Vol. 1, p. 48).

The Trial Judge then on November 6, 1968, without the approval of Counsel for the Petitioners entered a one-paragraph Order overruling the Motion for a new trial (Record Vol. 1, p. 54).

The Petitioners raised the points now complained of at the earliest appropriate time either in the Trial Court or the Appellate Court.

C.

ACTION IN THE APPELLATE COURT

There was no intermediate Appellate Court for review of the Trial Court's action, and the Petitioners at their first opportunity raised these questions in the Supreme Court of Tennessee as follows:

"1. It was error for the Trial Court to enter a Final Decree in this cause without permitting Appellants to offer proof showing the invalidity of the enactment of Ordinance No. 921 of the City of Maryville, which was the Annexing Ordinance, which was the basis of this lawsuit.

"2. It was error for the Court to submit improper issues of fact to the Jury over the objection of the Appellants, and which issues were incomplete and did not encompass the matter to be determined.

"3. It was error for the Trial Court to fail to submit the following specific issues of fact to the Jury as requested by the Appellants:

"'Does the health, safety, and welfare of the citizens and property owners of the area to be annexed and the citizens and property owners of the present City of Maryville, require the area to be annexed.'

"4. It was error for the Trial Court not to declare a mis-trial on its own Motion when the Jury failed to reach an agreement on all of the issues submitted to it, and likewise it was error for the Court not to do so upon the written Motion of the Appellants.

"5. The plan under which the annexation is brought about is so discriminatory as to be unconstitutional in view of the Fourteenth Amendment to the Constitution of the United States. It deprives the new residents of the right to vote or to hold office for a minimum of two and a maximum of four years."

Assignment of Errors in the Supreme Court,
Record Vol. 5, p. 5, 6, 8

VI.

REASONS WHY PETITION FOR CERTIORARI SHOULD BE GRANTED BY THIS COURT

A.

RIGHT TO TRIAL BY JURY

To describe what is the right to a Jury Trial seems as absurb as to describe how a rose smells in view of our history and heritage. Perhaps the most unlearned man in the street could say as eloquently as any Court what the right to trial by jury means.

The Supreme Court of Tennessee has simply stated it thusly:

> "The right of trial by jury is the right quaranteed to every litigant in jury cases to have the facts involved to have the facts determined by twelve jurors."
>
> *Williard v. Bates*, 1939
> 174 Tenn. 642, 130 S.W.2d 99

In the present case, twelve jurors were selected, but they were not permitted to try and determine the issues.

It is not disputed that the jury failed to agree on all of the issues submitted.

Clearly this amounts to a denial of a jury trial.

B.

FAILURE TO SUBMIT THE PROPER ISSUE TO THE JURY AMOUNTED TO A DENIAL OF A TRIAL BY JURY

As heretofore set out, the Petitioners allege that the primary issue of fact and the one which was the foundation

of the lawsuit was circumscribed by Statute, and when the Trial Judge failed to submit the same or even pretend to do so, there could be no determination of the lawsuit and there was no excuse for not doing so as the matter was objected to by the Petitioners and submitted in writing for the Court to present to the Jury, and without a doubt, amounts to a denial of the right to trial by Jury, and likewise is a denial of due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

C.

REFUSAL OF THE TRIAL JUDGE TO HEAR PROOF ON THE VALIDITY OF THE ANNEXING ORDINANCE AMOUNTED TO DENIAL OF DUE PROCESS

It would have been proper for the Trial Judge to have permitted the Jury to decide the issue of the validity of the Ordinance as well as the other issues, and the Petitioners attempted to get the Trial Judge to do so by submitting the same in writing (Record Vol. 1, p. 29).

The Petitioners, however, consented to the Judge hearing and determining this matter separate from the issues submitted to the Jury, with the understanding that they would be permitted to offer full proof on the issue.

The Court, however, consistently thereafter refused to consider the matter of the Ordinance any further or to hear any evidence on the subject.

D.

ANY STATUTE OR ORDINANCE WHICH PREVENTS SEVENTEEN HUNDRED PEOPLE FROM REPRESENTATION AT ANY LEVEL OF GOVERNMENT MUST FALL WHEN FACED WITH THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

Whatever may be said about the other proceedings in this lawsuit, the undeniable and existing fact is that seventeen hundred (1,700) residents are subject to a government in which they have no voice.

In the last decade this Court took the longest strides and made the most far-reaching decisions ever undertaken by any judicial body of any form of representative government on the face of the earth and from which there can be no departure. From *Baker v. Carr*, 369 U.S. 186; *Gray v. Sanders*, 372 U.S. 368; *Westberry v. Sanders*, 376 U.S. 1; *Reynolds v. Sims*, 377 U.S. 533, and on into *Avery v. Midland Co.*, 390 U.S. 474, and all of the succeeding cases prevent such discrimination and require equal population equal representation.

There is no place in this country where seventeen hundred people can be denied participation in their government at any level even for one month, much less four years.

VII.

PREMISES CONSIDERED, PETITIONERS PRAY:

1. That upon consideration of this Petition, the Writ of Certiorari be granted in order that this Court may make inquiry into the final judgment of the Supreme Court of Tennessee, to the end that justice may be done the parties

as secured to them by the Constitution of the United States.

THIS IS THE FIRST APPLICATION FOR A WRIT OF CERTIORARI IN THIS CASE

Respectfully submitted,

HUBERT D. PATTY,
Attorney for State of Tennessee, ex rel Chester D. Wyrick, et al

APPENDIX A

In The
SUPREME COURT OF TENNESSEE

STATE OF TENNESSEE, EX REL
CHESTER D. WYRICK, ET AL.,
Appellants,

v.

CITY OF MARYVILLE, ET AL.,
Appellee.

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BLOUNT EQUITY
HON. BUFORD A. TOWNSEND
CHANCELLOR.

Filed September 5, 1969

FOR APPELLANTS:

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Maryville, Tennessee.

FOR APPELLEES:

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Of Counsel:
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OPINION

This appeal is from an adverse decree of the Chancery Court of Blount County upholding the validity of an ordinance passed for the purpose of annexing a certain area to the City of Maryville.

Appendix A

Under authority of T.C.A. Section 6-309, the City of Maryville enacted Ordinance 921 which purported to annex an area adjacent to the City's corporate limits. Under T.C.A. Section 6-310, several property owners in the area filed the original bill herein seeking to have the ordinance declared invalid for the reason it was [fol. 2] not properly enacted; and that the annexation was not necessary for the welfare of the residents and property owners of the area sought to be annexed as well as those residing within the City. Relators demanded a jury to try the issues.

The jury found the description in the ordinance of the area to be annexed was sufficient; that the City was financially able to provide the services proposed for the area to be annexed; and that the residents of the area would benefit from particular services.

The Chancellor decided the question of reasonableness or unreasonableness of the ordinance was a fairly debatable question and took the matter from the jury and upheld the validity of the ordinance.

Relators have assigned as error the following:

"1. It was error for the trial court to enter a final decree in this cause without permitting the appellants to offer proof showing the invalidity of the enactment of Ordinance 921 of the City of Maryville.

"2. It was error for the Court to submit improper issues of fact to the jury over the objection of appellants, and which issues were incomplete and did not encompass the matters to be determined.

"3. It was error for the trial court to fail to submit the following specific issue of fact to the jury as

requested by appellants: 'Does the health, safety, and welfare of the citizens and property owners of the area to be annexed and the citizens and property owners of the present City of Maryville require the area to be annexed.'

"4. It was error for the trial court not to declare a mistrial on its own motion when the jury failed to reach an agreement on all of the issues submitted to it, and likewise it was error for the court not to do so upon the written motion of the appellants.

"5. The description of the proposed boundary lines of the area sought to be annexed is insufficient as a matter of law.

[fol. 3] "6. It was error for the court to accept the findings of the jury as to the sufficiency of the description where the jury found, as a matter of fact, that it was in error by one-half (1/2) mile.

"7. It was error for the court to comment upon certain aspects of the case to the jury.

"8. The plan under which the proposed annexation is brought about is so discriminatory as to be unconstitutional in view of the fourteenth amendment to the Constitution of the United States. It deprives the new residents of the right to vote or to hold office for a minimum of two (2) and a maximum of four (4) years."

The record clearly shows the first assignment is without merit. Nowhere in the record can we find where the Chancellor denied relators the right to offer proof as to the invalidity of the ordinance; nor does Counsel point out in his brief where such action occurred.

Moreover, the record shows the ordinance was passed in conformity with the relevant statutory and charter provisions.

Nevertheless, relators argue the issue of the validity of the enactment of the ordinance was a jury question. We disagree.

In State vs. City of Knoxville, 211 Tenn. 271, 364 S.W.(2d) 898 (1962), the relators contended the annexing ordinance was invalid because, among other grounds, the statute was not complied with when the ordinance was adopted. In upholding the trial judge's finding the statutory requirements were met, the Court said:

> "The questions involved were law or fact or of mixed law and fact, and at the conclusion of all the proof the trial judge properly concluded that it was his obligation to make a decision in these cases without the intervention of a jury."

[fol. 4] Relators' second assignment of error is likewise without merit. Counsel does not discuss this assignment in his brief. From a careful search of the record we are unable to find a single instance of the Chancellor submitting an issue to the jury over the objection of relators.

The third assignment must be overruled. It was not error for the Chancellor to fail to submit to the jury the question set forth in this assignment because it became a question of law for the Court. Had the Chancellor submitted this question to the jury, it would have become necessary for him to withdraw it from the jury. The Chancellor correctly found the question of the reasonableness of the ordinance was a fairly debatable one and thus a question of law. Having determined the issue of rea-

sonableness was a fairly debatable question, it was his duty to find in favor of the ordinance.

There was a voluminous amount of testimony in the present case, both for and against the proposed annexation. The record abounds with conflicting testimony as to the reasonableness or unreasonableness of the proposed annexation. This being true, this Court must apply the following rule:

> "* * * The Court does not, in any sense, substitute its discretion or judgment as to the advisability or propriety of the annexation for that of the legislative body of the city, and that it does not review the legislative discretion; its consideration of the 'reasonableness' is confined to a determination of whether there exists a sufficient showing of reasonableness to make that question, at the least, a fairly debatable one; if there is such, then the discretion of the legislative body is conclusive." Morton vs. Johnson City, 206 Tenn. 411, 333 S.W.(2d) 924 (1960).

The fourth assignment urges the Chancellor erred in not declaring a mistrial when the jury failed to agree on one aspect of the following issue:

[fol. 5] "Would the residents and property owners of the proposed annexation area benefit from the services as proposed by the city in the following particulars: streets and roads, street lights, street name signs, garbage collection, police and fire protection, water, sewerage, building inspection, planning and zoning, recreation, and schools?"

The jury answered "yes" to all of the above with the exception of the question as to "schools". On this they could not agree.

Counsel in his brief admits the failure of the jury to agree on this aspect of the question was not material. Secondly, as previously stated, if the reasonableness or unreasonableness of the annexation is a fairly debatable question then it becomes a question of law for the Court. The dealing with various services was important in determining the reasonableness of the annexation. The assignment is overruled.

The fifth assignment urges the description of the area sought to be annexed was insufficient as a matter of law. We disagree.

The jury found the description as set out in the ordinance sufficiently described the area so that it could be reasonably established by known and proven methods. Thus, the question is whether there is any material evidence to support the finding. Davis, et al vs. Mitchell, et al, 27 Tenn. App. 182, 178 S.W.(2d) 889 (1943).

The city engineer, a civil engineer, prepared the description of the boundary set forth in the ordinance. He testified he could locate all points of the description on the ground and by reversing the calls the beginning corner could be ascertained. This is material evidence to support the finding of the jury.

[fol. 6]

The sixth assignment of error insists the jury found an error of one-half mile in the boundary of the proposed area to be annexed. However, this is not borne out by the record.

After the jury retired and came back in court, one juror stated the jury could not agree on whether the description sufficiently described the area so that it could be reasonably located by known and proven methods.

The Chancellor, by agreement of Counsel, gave further instructions concerning the description of property and when the jury returned the second time they had agreed on this issue in favor of the City.

The determinative question under the seventh assignment of error is whether the Chancellor, in charging the jury, assumed any fact as established or whether he singled out particular facts and gave them undue prominence so as to lead the jury to believe that such evidence was of greater significance and weight than any other evidence not mentioned in the charge. A careful review of the charge does not disclose any improprieties in the Chancellor's charge to the jury. Furthermore, no objection was made to the charge by Counsel for relators.

The eighth and final assignment contends the residents of the area to be annexed are deprived of the right to vote or hold a city office for a minimum of two years and a maximum of four years.

The ordinance providing for annexation of an [fol. 7] area is not required to contain, as a condition precedent to its validity, a provision setting up the rights mentioned in T. C. A. Section 6-315.

"So, while such residents and property owners are entitled to the rights and privileges of citizenship of the city, immediately upon annexation, they, of course, cannot be entitled to such rights before annexation takes effect; nor do we think they can maintain that the ordinance must contain, as a condition precedent to its validity, a provision setting up such rights for them. There is nothing in the statute to warrant such construction.

"As pointed out by the trial judge, the annexation ordinance will not become effective until 30 days after its passage, or 30 days after its validity has been determined by judicial decree; and it is enough if the rights of the citizens of that area are provided for by ordinance, as may be done, when the annexation ordinance becomes effective. Certainly we cannot declare the ordinance void on the assumption that the City Council will not do their duty. The presumption is that they will do it." City of Knoxville vs. State, 207 Tenn. 558, 341 S. W. (2d) 718 (1960).

In the case of State vs. Mayor, etc., Morristown, 218 Tenn. 593, 404 S. W. (2d) 798 (1966), the Court said:

"Just how the providing of political representation to the annexed area is to be accomplished seems to us to be of no determinative moment. The express provision of T. C. A. Section 6-315 requires such. This contention falls within the ambit of the decision of this Court in City of Knoxville vs. State, ex rel Graves (1960) 207 Tenn. 558, 341 S. W. (2d) 718."

We find no error in the record. All assignments are overruled and the decree of the Chancellor is affirmed. Relators will pay the costs.

/s/ CHESTER C. CHATTIN
CHESTER C. CHATTIN
JUSTICE

BURNETT, C. J.,
DYER, CRESON, AND
HUMPHREYS, JJ., CONCUR.

APPENDIX B

IN THE SUPREME COURT OF TENNESSEE

STATE OF TENNESSEE, EX REL
CHESTER D. WYRICK, ET AL.,
Petitioners,

VS

CITY OF MARYVILLE, ET AL.,
Respondents.

BLOUNT EQUITY

FILED
OCT 6 1969
JOHN A. PARKER, Clerk

ON PETITION TO REHEAR

Complainants have filed an earnest petition to rehear. The petition points out no matter of fact or law overlooked, but only reargues matters which able Counsel insists were improperly decided, after argument and full consideration. Such a petition presents no ground for a rehearing.

In our original opinion we considered each and every assignment of error supported by petitioner's brief and argument.

> "The office of a petition to rehear is to call the attention of the court to matters overlooked, not to those things which Counsel supposes were improperly decided after full consideration." Logan vs. Reaves, 209 Tenn. 631, 354 S.W. (2d) 789 (1962).

The petition is denied at petitioners' cost.

/s/ CHESTER C. CHATTIN
CHESTER C. CHATTIN
JUSTICE

APPENDIX C

IN THE CHANCERY COURT FOR BLOUNT COUNTY, TENNESSEE

STATE OF TENNESSEE, EX REL, Chester D. Wyrick, A. W. LeQuire, T. H. Brown, Jr., Ralph Caughron, Mary E. Smith, Archie Chapman, Elizabeth Redwine, and Ray Patty,
Complainants

Vs.

CITY OF MARYVILLE, a municipal corporation, T. New Lee, Joe B. Montgomery, Jr., Luke M. Kidd, and S. B. Shields,
Defendants

NO. 7371

FILED
JUL 16 1968
JOHN B. MORTON

Appendix C

ISSUES FOR THE JURY

1. Does the description as set out in the ordinance sufficiently describe the area proposed to be annexed so that it can be reasonably established or ascertained by known or proven methods?

   Yes ✓ No .....

2. Is the City of Maryville financially able to provide the services proposed for the area sought to be annexed?

   Yes ✓ No .....

3. Would the residents and property owners of the proposed annexation area benefit from the services as proposed by the City of Maryville in the following particulars:

   (Answer yes or no to each)

   A. Streets and Roads? Yes ✓ No .....
   B. Street lights? Yes ✓ No .....
   C. Street name signs? Yes ✓ No .....
   D. Garbage collection? Yes ✓ No .....
   E. Police protection? Yes ✓ No .....
   F. Fire Protection? Yes ✓ No .....
   G. Water? Yes ✓ No .....
   H. Sewerage? Yes ✓ No .....
   I. Building inspection? Yes ✓ No .....
   J. Planning and Zoning? Yes ✓ No .....
   K. Recreation? Yes ✓ No .....

Appendix C

L. Schools? Yes ..... No .....

/s/ GEORGE H. DAVIS

/s/ H. A. CATE

/s/ CLIFFORD H. CARPENTER

/s/ ROBERT RHYNE

/s/ CARL TALLENT

/s/ JOHN McCONNELL

/s/ R. H. DeARMOND

/s/ JOE McCAMMON

/s/ VIRGIL TINDELL

/s/ WADE K. JOHNSON

/s/ R. B. WHEELER

/s/ DOROTHY YEAROUT

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

NO. 1252

STATE OF TENNESSEE, ex rel, CHESTER D. WYRICK, A. W. LeQUIRE, T. H. BROWN, JR., RALPH CAUGHRON, MARY E. SMITH, ARCHIE CHAPMAN, ELIZABETH REDWINE and RAY PATTY,

Petitioners,

v.

CITY OF MARYVILLE, a Municipal Corporation, T. NED LEE, JOE. MONTGOMERY, JR., LUKE M. KIDD, and S. B. SHIELDS,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JOHN C. CRAWFORD, JR.,
Post Office Box 368,
Maryville, Tennessee, 37801.

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ROY D. CRAWFORD,

Counsel for Respondents.

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IN THE

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CITY OF MARYVILLE, a Municipal Corporation, T. NED LEE, JOE B. MONTGOMERY, JR., LUKE M. KIDD, and S. B. SHIELDS,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

This is a suit involving the validity of the annexation by Respondents of an area adjacent to City of Maryville pursuant to the powers granted by the General Assembly of the State of Tennessee, the salient portions of which appear in Tennessee Code Annotated, Sections 6-309 and 6-310, to-wit:

"6-309. Annexation by ordinance. — A municipality when petitioned by a majority of the residents and property owners of the affected territory, or upon its own initiative when it appears that the prosperity of such municipality and territory will be materially retarded and the safety and welfare of the inhabitants and property thereof endangered, after notice and public hearing, by ordinance, may extend its corporate limits by annexation of such territory adjoining its existing boundaries as may be deemed necessary for the welfare of the residents and property owners of the affected territory as well as the municipality as a whole, provided said ordinance shall not become operative until thirty (30) days after final passage thereof.

"Provided, however, that before any territory more than one-fourth (1/4) square mile in area or having a population of more than five hundred (500) persons may be annexed under this section, the governing body of the municipality shall adopt a plan of service setting forth at a minimum the identification and projected timing of municipal services proposed to be extended into the territory proposed to be annexed. Provided, further, that before any such plan of service shall be adopted, it must have been submitted to the local planning commission, if there be such, for study and a written report, to be rendered within ninety (90) days after such submission, unless by resolution of the governing body a longer period is allowed. ..."

Tennessee Code Annotated 6-309
Vol. 2, P. 241

"6-310. Quo warranto to contest annexation ordinance. —Any aggrieved owner of property lying within territory which is the subject of an annexation ordinance

prior to the operative date thereof, may file a suit in the nature of a quo warranto proceeding in accordance with §§6-308—6-320 and chapter 28 of title 23, to contest the validity thereof on the ground that it reasonably may not be deemed necessary for the welfare of the residents and property owners of the affected territory and the municipality as a whole and so constitutes an exercise of power not conferred by law.

"If more than one (1) suit is filed, all of them shall be consolidated and tried as one (1) in the first court of appropriate jurisdiction in which suit is filed. Suit or suits, shall be tried on an issue to be made up there, and the question shall be whether the proposed annexation be or be not unreasonable in consideration of the health, safety and welfare of the citizens and property owners of the territory sought to be annexed and the citizens and property owners of the municipality. Should the court find the ordinance to be unreasonable, an order shall be issued vacating the same. In the absence of such finding an order shall be issued sustaining the validity of such ordinance, which shall then become operative thirty-one (31) days after judgment is entered unless an abrogating appeal has been taken therefrom.

"If on appeal judgment shall be against the validity of such ordinance, an order shall be entered vacating the same; otherwise, it shall become operative forthwith by court order and shall not be subject to contest or attack in legal or equitable proceeding for any cause or reason, the judgment of the appellate court being final."

Tennessee Code Annotated 6-310
Vol. 2, P. 244

I.

There was no denial of right to trial by jury.

(Petitioners' Questions 1. and 2.)

(a) Petitioners demanded and were granted a trial by jury.

(b) Petitioners made no objection to the issues submitted to the jury nor to the omission of any issue.

(c) The only material issue submitted to the jury, which is admitted to be such by Petitioners (Petitioners' Brief, pp. 7-8) is Issue 1 relative to the sufficiency of the description of the annexed area which issue was answered by the jury in the affirmative. (Petitioners' Appendix C)

(d) The court does not substitute its discretion or judgment as to the advisability or propriety of annexation for that of the legislative body of the city and it does not review the legislative discretion. The court's consideration of the question shall be " .... whether the proposed annexation be or be not unreasonable in consideration of the health, safety and welfare of the citizens and property owners of the territory sought to be annexed and the citizens and property owners of the municipality" (Tennessee Code Annotated 6-310, Vol. 2, p. 244) and in that consideration the court is confined to the determination of whether there exists a sufficient showing of reasonableness to make that question, at the least, a fairly debatable one, and if there is such, then the discretion of the legislative body is conclusive.

Morton v. Johnson City (1960)
206 Tenn. 411, 333 S.W.2d 924

The evidence overwhelmingly preponderated in favor of Respondents on the question of "whether the proposed annexation be or be not unreasonable" and it then became the duty of the trial judge to withdraw the issue from the jury, find in favor of the legislative body which had passed the ordinance and decree the ordinance of annexation valid.

Morton v. Johnson City, supra
State v. Mayor, et al, Morristown
(1966) 218 Tenn. 593, 404 S.W.2d 798

II.

The trial court did not fail to permit or refuse the Petitioners an evidentiary hearing on the municipal ordinance.

(Petitioners' Question 3)

(a) There is nothing in the Record to support this contention of Petitioners nor was there any such understanding.

(b) At the trial, Petitioners called as their witness the Recorder of the City who answered all questions asked him by Petitioners regarding the enactment of the annexing ordinance without objection by Respondents' counsel and without interference by the Chancellor. (Record, pp. 85-127)

(c) After the hearing of proof in chief for nearly three days and consisting of two hundred sixty-three pages of testimony on behalf of Petitioners, including some officials and employees of the City, the Petitioners rested their case in chief. (Record, pp. 1-263) Later, on the 4th day of the trial, after introducing further evidence, Petitioners rested their case. (Record, p. 412) As a further fact that Petitioners were never denied the opportunity

of introducing proof, in a colloquia among the Chancellor and Counsel, the counsel for Petitioners complained that Respondents were unduly extending the trial by "bringing in proof and proof" and "we would be here all through July." (Record, pp. 366-367)

III.

The ordinance does not deny the residents of the annexed area the immunities and privileges guaranteed by the 14th Amendment of the Constitution of the United States.

(Petitioners' Question 4)

(a) The residents of the annexed area, otherwise qualifying as to age, etc., in like manner as other residents of the City, could have voted and run for office in the 1967 and also in the 1969 City elections, had not the suit of Petitioners been filed enjoining the annexation.

(b) The rights, privileges and immunities of Petitioners and other residents of the annexed area are protected by the provisions of Tennessee Code Annotated, Section 6-315, to-wit:

> "6-315. Rights of residents of annexed territory. — Residents of, and persons owning property in, annexed territory shall be entitled to rights and privileges of citizenship, in accordance with the provisions of the annexing municipality's charter, immediately upon annexation as though such annexed territory had always been a part of the annexing municipality. It shall be the duty of the governing body to put into effect with respect to an annexed area any charter provisions relating to representation on the governing body."
>
> Tennessee Code Annotated 6-315
> Vol. 2, P. 248

(c) The ordinance of annexation is not required to contain, as a condition precedent to its validity, any provisions setting up the rights mentioned in the above code section, because the presumption is that the governing body of the City will do its duty and there is certainly no presumption that it will not do its duty.

> State ex rel v. Mayor, et al, Morristown (1966) 218 Tenn. 593, 602, 404 S.W.2d 798

(d) On the effective date of the annexing ordinance following the judgment of the Supreme Court of Tennessee the City began furnishing and has continued to furnish the annexed area certain services in accordance with the schedules adopted in connection with the annexation and the governing body has put into effect with respect to the annexed area all charter provisions relating to representation on the governing body, so that residents of and persons owning property in the annexed territory now have the rights and privileges of citizenship in accordance with the provisions of the annexing municipality's charter as though such annexed territory had always been a part of the City of Maryville. (See affidavit of Lynn L. Shasteen, Recorder of City of Maryville, Respondents' Appendix A, page 9).

(e) The annexing statutes do not require, nor should they require, that immediately upon annexation the city call a special election in contravention of its charter provisions in order to give new residents a governing voice in affairs of the municipality. There must be some period of time intervening between the effective date of annexation and a subsequent election of city officials and that period will vary in each situation.

(f) The annexation of lands to a city or town is purely a political matter, entirely within the power of the legislature of the State to regulate.

Deane Hill Country Club, Inc. v. City of Knoxville (1967), 379 F.2d 321 (6th Cir.), cert. denied, 389 U.S. 975

IV.

CONCLUSION

Respondents have followed the time schedule for supplying services to the annexed territory without deriving any revenues directly from the property owners in the area in the form of property taxes, which property owners within the City but outside the annexed territory have been compelled to pay such taxes. The protracted litigation by Petitioners has placed the Respondents in the difficult position of determining how and when to integrate the new with the old of the City of Maryville in an orderly fashion.

For the reasons set forth above, the Petition For Certiorari should be denied.

Respectfully submitted,

JOHN C. CRAWFORD, JR.,
Post Office Box 368,
Maryville, Tennessee, 37801,

Other Counsel:

ROY D. CRAWFORD,

Counsel for Respondents.

[fol. 1]

APPENDIX A

AFFIDAVIT

Lynn L. Shasteen, being first duly sworn, states that he is the duly appointed Recorder of the City of Maryville, Tennessee; that he knows of his own personal knowledge the following stated facts relative to the area annexed to the City of Maryville, which annexation became effective November 6, 1969, and as to services furnished the residents and property owners of the area by the city:

1. Police protection was provided immediately with the effective date of annexation on November 6, 1969.

2. Fire protection was provided immediately with the effective date of annexation from a newly constructed and equipped modern fire station located especially to serve the annexed area.

3. Water service was provided on the effective date of annexation for domestic, commercial and industrial use under city rates which are lower than rates charged for users outside the corporate limits.

Forty-three fire hydrants have already been installed and put in use in the annexed area.

4. Sewer service—a study of sewer requirements of the annexed area has been completed and steps have already been taken to complete the financing of sewer extensions in the area.

5. Carbage collection for the entire annexed area was started approximately ten days after the effective date of annexation.

6. Streets—cleaning and emergency maintenance of the streets in the annexed area was started on the effective date of annexation.

6.15 miles of streets in the annexed area have already been resurfaced at a cost to the city of $75,314.10. Street signs have already been installed in the area.

[fol. 2] 7. Street lighting—the equipment for street lighting has been purchased and a portion of it has already been installed.

8. Recreation—all recreational facilities of the city were made available to the residents of the annexed area immediately upon the effective date of annexation including a new, large park near the annexed area. A modern municipal swimming pool and park will be completed near the annexed area within two months which will be available to the residents.

9. Schools—a modern city grammar school has been completed immediately adjacent to the annexed area. Residents of the annexed area have been permitted by the city to send their children to the city schools during the 1969-1970 school year without paying the fees charged non-residents of the city even though the effective date of annexation was more than two months after the start of the school year.

10. No property taxes will be collected by the city from the property owners in the annexed area until September 1, 1970.

11. No municipal election has occurred since the effective date of annexation, but on January 20, 1970, Ordinance No. 1000 was enacted by the city placing the annexed area in an existing ward of the city and all residents of the

annexed area if otherwise qualified can hereafter vote in any municipal election in the same manner as can residents of the rest of the city.

Witness my hand this 17th day of March, 1970.

/s/ LYNN L. SHASTEEN
Lynn L. Shasteen
Recorder of the City of Maryville,
Tennessee

Subscribed and sworn to before me, this 17th day of March, 1970.

/s/ Roy D. Crawford
Notary Public

My commission expires:
January 21, 1973.